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Security Council

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Fourth report of the Secretary-General pursuant to paragraph 8 of Security Council resolution 1958 (2010)

I. Introduction

1. The present report is submitted pursuant to paragraph 8 of Security Council resolution 1958 (2010), in which the Council requested me to report and provide analysis to the Council on the usage and expenditure of the escrow accounts referenced in paragraphs 4 and 5 of the resolution on an annual basis, with the first report no later than 31 March 2012, and the final report occurring three months after the transfer of any remaining funds retained for the purposes stated in paragraphs 4 and 5 to the Government of Iraq by 31 December 2016, unless otherwise authorized by the Security Council.

II. Background

2. Pursuant to paragraphs 4 and 5 of resolution 1958 (2010), the Secretariat transferred from the Iraq Account: (a) $20 million to the administrative escrow account exclusively for the expenses of the United Nations related to the orderly termination of the residual activities of the "oil-for-food" programme, including the Organization's support to Member State investigations and Member State proceedings related to the programme, and the expenses of the office of the High-level Coordinator created pursuant to Security Council resolution 1284 (1999); and (b) $131 million to the indemnification escrow account for the indemnification of the Government of Iraq to the United Nations, its representatives, agents and independent contractors.

3. In its resolution 2107 (2013), the Security Council decided to terminate the arrangements set forth in paragraph 14 of resolution 1284 (1999).

III. Administrative escrow account

4. I should like to inform the members of the Security Council that the activities undertaken and funded as outlined in paragraph 4 of resolution 1958 (2010) from 1 January 2014 to 31 December 2014 have led to expenditure amounting to $776,276. The breakdown of the above expenditure is as follows: (a) $689,512 for the activities related to the orderly termination of the residual activities of the "oil-for-food" programme; and (b) $86,764 for the Organization's support to

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Member State investigations and Member State proceedings related to the programme.[1]

5. With regard to the expenditures under paragraph 4 (b) above, no further expenditures will be incurred in connection with the Organization's support to Member State investigations and Member State proceedings. Such support was provided by the Office of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme, which I closed as at 31 December 2013.

IV. Indemnification escrow account

6. I should like to inform the members of the Security Council that no expenditures have been incurred to date in respect of the amount referred to in paragraph 5 of resolution 1958 (2010).

7. Following my last report to the Security Council of 26 March 2014 (S/2014/221), the Secretariat met again with the Government of Iraq to negotiate the implementing agreements as provided for in paragraph 7 of resolution 1958 (2010). However, differences continue to remain between the Government of Iraq and the Secretariat. The Secretariat is of the view that, pursuant to resolution 1958 (2010), the Government of Iraq's obligation to indemnify the United Nations, its representatives, agents and independent contractors should not (a) be limited to the amount held in the indemnification escrow account; and (b) expire and lapse on 31 December 2016. That would ensure that the United Nations, its representatives, agents and independent contractors would be adequately protected from exposure to liability resulting from the oil-for-food programme.

8. At the request of the Government of Iraq, I attach to the present report communications from the Government of Iraq from October 2012, February 2014 and August 2014 (see annexes I-III). I should like to stress the importance of the indemnification agreements being concluded in the very near future. In this regard, the Secretariat remains ready to continue discussions with the Government of Iraq, and I will apprise the Security Council of the outcome of the continued efforts of the Secretariat.

9. In the absence of a successful conclusion of the indemnification agreements between the United Nations and the Government of Iraq, I would revert to the members of the Security Council in respect of the Government of Iraq's obligation to indemnify the United Nations, its representatives, agents and independent contractors, including on paragraph 8 of Security Council resolution 1958 (2010), which provides that the remaining funds in the indemnification escrow account shall be returned to the Government of Iraq by 31 December 2016, unless otherwise authorized by the Council.

[1] Expenditures relate to the liquidation activities for the Organization's support to Member State investigations and Member State proceedings related to the programme.

V. Other

10. In paragraph 2 of resolution 1958 (2010), the Council called upon the Government of Iraq to provide without delay direct payment to the beneficiaries or its representatives of the letters of credit as referenced in the note of the Secretary-General, dated 8 December 2010 (S/2010/619), paragraphs 11 and 12 and annexes II and III thereto.

11. In my reports of 2 April 2012 (S/2012/191), 26 March 2013 (S/2013/191) and 26 March 2014 (S/2014/221), I advised the Council that payments to certain beneficiaries remained outstanding. I am concerned that the payments have not been made, and I continue to urge the Government of Iraq to provide the payments without any delay to the beneficiaries as called for by the Council in its resolution 1958 (2010).

Annex I

The Permanent Mission of the Republic of Iraq to the United Nations presents its compliments to the Executive Office of the Secretary-General of the United Nations and has the honour to attach herewith a copy of a letter from H.E. Hussain al-Shahristani, Deputy Prime Minister and acting Minister for Foreign Affairs of the Republic of Iraq, addressed to H.E. Ban Ki-moon, Secretary-General of the United Nations (see enclosure), regarding the recent round of consultation between the Government of Iraq and the United Nations Secretariat on the implementation of paragraph 7 of resolution 1958 (2010).

New York, 18 August 2014

Enclosure

[Original: Arabic]

Baghdad, August 2014

At the outset, I should like to recall the letters that were sent to Your Excellency in October 2012 and February 2014, and draw attention to the fifth round of consultations between the Iraqi Government delegation and the United Nations Secretariat that took place from 30 July 2014 to 1 August 2014. I wish to reiterate that I regret that this most recent round of consultations did not conclude with the drafting of two memorandums of understanding, in accordance with Security Council resolution 1958 (2010), paragraph 7, that satisfy the interests of both parties. This failure can be attributed to the Secretariat delegation's insistence that, in the two memorandums of understanding, Iraq's obligations should extend beyond 31 December 2016, which is the date specified in the above-mentioned Security Council resolution. The Secretariat delegation also refused to adhere to the ceiling of $131 million established for compensation by that same resolution. We explained our position in that regard in a letter dated 12 October 2012 addressed to you.

In view of the Iraqi Government's desire to resolve this difference and draw up the memorandums of understanding as soon as possible, and given the outstanding cooperative relationship between Iraq and the United Nations, the Iraqi delegation to the fifth round of consultations came forward with a constructive proposal that was aimed at allaying the Organization's concerns without harming the interests of Iraq. Under that proposal, Iraq would have continued to cooperate with the Secretariat to review and address any problems related to the memorandums of understanding that might arise after 31 December 2016. However, contrary to our hope, that proposal did not allay the Secretariat's concerns. It should be noted that the Iraqi delegation to the third round of consultations, which took place in October 2012, also attempted to arrive at a solution that would address the Organization's concerns. At that time, the Iraqi delegation proposed that the Security Council should take up the difference between the two sides at a future date that the Secretariat felt was appropriate. Although this proposal is in line with resolution 1958 (2010), paragraph 8, under which the Security Council is granted such a right, it was rejected by the Secretariat delegation.

In the course of these consultations, we have made great efforts and put forward realistic proposals. We therefore regret that it was not possible to arrive at an agreement that allayed the concerns of both sides. We cannot make proposals that go further than what we have already offered without harming our national interests. We had hoped that the Secretariat would understand Iraq's difficult position and its desire to ensure that any agreement between Iraq and the United Nations pursuant to resolution 1958 (2010), paragraph 7, should not give rise to any new obligations for which no provision is made in the resolution.

I should be grateful if the present letter and the letters we sent to Your Excellency in October 2012 and February 2014 could be annexed to your forthcoming report to the Security Council.

(*Signed*) Hussain **al-Shahristani**
Deputy Prime Minister
Acting Minister for Foreign Affairs

Annex II

The Permanent Mission of the Republic of Iraq to the United Nations presents its compliments to the Office of the Secretary-General of the United Nations and with reference to Security Council resolution 1958 (2010) concerning ending all of the remaining activities of the oil for food programme, has the honour to attach herewith the copy of a letter from H.E. Hoshyar Zebari, Minister for Foreign Affairs of the Republic of Iraq (see enclosure). The Mission of the Republic of Iraq has further the honour to inform that the original letter will follow by mail.

New York, 6 February 2014

Enclosure

[Original: Arabic]

February 2014

I write with reference to my letter of 21 October 2012, the round of consultations that took place between the delegation of Iraq and the Secretariat from 28 to 30 January 2014, and Security Council resolution 1958 (2010), paragraph 7. It is unfortunate that the round of negotiations did not settle the issue of completing the drafting of two memorandums of understanding in a manner that fulfil the interests of both parties. Significant efforts have recently been made, and several important issues have been resolved. It remains only to find a way to address the Secretariat's insistence that Iraq's obligations should extend beyond 31 December 2016 pursuant to those memorandums. I explained our position on the subject in the above-mentioned letter.

The delegation of Iraq attempted to reach a solution that would address the concerns of the United Nations by postponing the issue for a future report of the Security Council, at such a time as the Secretariat deemed appropriate. That solution would have been consistent with resolution 1958 (2010), paragraph 8, under which the Security Council is granted such rights. However, the delegation of the Secretariat found that those assurances were not sufficient to allay its concerns, whereas we had hoped that the proposal would be accepted.

We reiterate our desire to finish drafting the two memorandums of understanding as soon as possible. We hope that the Secretariat will understand Iraq's difficult position and its desire that the two memorandums of understanding to be signed should not give rise to any new obligations for which no provision is made in Security Council resolution 1958 (2010).

(*Signed*) Hoshyar **Zebari**
Minister for Foreign Affairs of the Republic of Iraq

Annex III

The Permanent Mission of the Republic of Iraq to the United Nations presents its compliments to the Office of the Secretary-General and has the honour to attach herewith a copy of the letter from H.E. Hoshyar Zebari, Minister for Foreign Affairs of the Republic of Iraq, dated 16 October 2012 addressed to H.E. Ban Ki-moon, Secretary-General of the United Nations (see enclosure).

The Permanent Mission of the Republic of Iraq would deeply appreciate it if the attached letter could kindly be forwarded to its highest destination.

New York, 22 October 2012

Enclosure

[Original: Arabic]

Baghdad, 16 October 2012

I refer to my letter to you of 5 July 2011 in which I noted that I had directed the delegation of Iraq to resume consultations with the United Nations Secretariat on the basis of paragraph 7 of Security Council resolution 1958 (2010). Although the consultations with the Secretariat that took place on 2 October 2012 did not resolve the two areas of disagreement to which you referred in your first report to the Security Council on 2 April 2012, we continue to share your opinion that it is important to conclude these consultations in a way that will serve the common interests of Iraq and the United Nations, as specified in the above-mentioned Security Council resolution. As you are aware, the adoption of Security Council resolution 1958 (2010) as currently formulated was preceded by consultations and difficult compromises between the relevant parties that took into account the interests of all in a consensual manner. Consequently, to reinterpret the resolution may harm, in one way or another, the interests of one of the parties. Under paragraph 5 of the resolution, the sum that was to be retained in the escrow account for the purpose of providing indemnification was set at $131 million, and that figure was reaffirmed in subparagraph 7 (a) of the same resolution. There is therefore no room for any reinterpretation that would result in an increase in that sum. Moreover, the Security Council resolution sets 31 December 2016 as the date for the termination of the residual activities of the programme. Reaffirming its importance, that date is mentioned in three paragraphs of the resolution, namely, paragraphs 4, 5 and 8. In addition, paragraph 5 states that the United Nations shall retain funds for the purpose of providing indemnification with regard to all activities in connection with the oil-for-food programme since its inception for a period of six years from the date of adoption of the resolution. These various paragraphs also provide that the United Nations shall transfer all remaining funds to the Government of Iraq by the above-mentioned date, namely, 31 December 2016. That date is mentioned more than once in the resolution. Here again, there would seem to be no room for any reinterpretation that would push that date further into the future.

We believe that the proposal submitted by the delegation of Iraq during the most recent round of consultations on 2 October 2012 was formulated using language that could accommodate the concerns of the United Nations. Accordingly, we hope that it will be accepted by the Secretariat.

We look forward to the conclusion of these consultations and an agreement that will be in the interests of both parties. We hope, and will endeavour to ensure, that the two memorandums of understanding that are to be signed will not add any new obligations for which no provision is made in Security Council resolution 1958 (2010).

(*Signed*) Hoshyar **Zebari**
Minister for Foreign Affairs of the Republic of Iraq